

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,
and
OSAGE MINERALS COUNCIL,
Intervenor-Plaintiff,
vs. No. 14-cv-704-GKF-JFJ
OSAGE WIND, LLC,
ENEL KANSAS, LLC;
and ENEL GREEN POWER
NORTH AMERICA, INC.,

Defendants.

ZOOM/VIDEOTAPED DEPOSITION OF JOAN HEREDIA
TAKEN ON BEHALF OF THE INTERVENOR-PLAINTIFF
ON JULY 30, 2021, BEGINNING AT 10:31 A.M.
ALL PARTIES APPEARING VIA ZOOM

APPEARANCES

On behalf of the PLAINTIFF:

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(Appearances continued on next page.)

VIDEOTAPED BY: Sean Shell
REPORTED BY: Jane McConnell, CSR RPR RMR CRR

<p>1 (Appearances continued) 2 On behalf of the INTERVENOR-PLAINTIFF: 3 Wilson Pipistem 4 Jennifer Baker 5 PIPESTEM & NAGLE 6 1333 New Hampshire Avenue, N.W. 7 Washington, DC 20036 8 (202) 407-0591 9 wkipistem@pipestemlaw.com 10 On behalf of the INTERVENOR-PLAINTIFF and DEFENDANT 11 OSAGE WIND, LLC, ENEL KANSAS, LLC and ENEL GREEN 12 POWER NORTH AMERICA, INC.: 13 Ryan A. Ray 14 NORMAN, WOHLGEMUTH 15 401 S. Boston, Suite 2900 16 Mid-Continent Tower 17 Tulsa, Oklahoma 74103 18 (918) 583-7571 19 rar@nwcdlaw.com 20 Lynn H. Slade 21 MODRALL, SPERLING, ROEHL, SISKA, P.A. 22 Post Office Box 2168 23 Albuquerque, New Mexico 87103-2168 24 (505) 848-1800 25 lynn.slade@modrall.com 26 27 On behalf the DEFENDANTS AND WITNESS JOAN HEREDIA: 28 Robin Ball 29 NORTON ROSE FULBRIGHT US LLP 30 555 South Flower Street 31 Forty-First Floor 32 Los Angeles, California 90071 33 (213) 892 9366 34 robin.ball@nortonrosefulbright.com 35 36 ALSO PRESENT: Francesca Boewe, Nolan Fields 37 Christina Watson, Michelle Hammock 38 39</p>	<p>1 EXHIBITS (Continued) 2 Exhibit Description Page 3 93 Procedures of Obtaining Sand Soil 137 4 and Rock Mining Permits for Osage 5 County 6 98 Email String Re: Osage Unfolding 129 7 Events 8 99 Email String Re: Osage - Bureau of 198 9 Indian Affairs 10 131 10-30-14 Letter to Alan Woodcock 172 11 from Robin Phillips 12 13 (Exhibits marked in Ms. Heredia's deposition: 14 146 Construction Management Agreement 70 15 Between Enel Green Power North 16 America, Inc. and Osage Wind, LLC 17 Dated August 19, 2014 18 19 147 Memo from Joan Heredia to Matt 90 20 Gilhouse Re: BIA 21 148 Declaration of Joan Heredia 111 22 149 Email String Re: Lease (Permit) 175 23 Information 24 25 150 Deposition of Bill Moskaluk 176 26 27 151 Email String Re: BIA Sandy Soil 187 28 Permit 29 152 Email String Re: Osage Wind 190 30 Construction Activities 31 32 153 Email String Re: Usage, Use of 150 33 Soil Materials 34 153 Email 213 35 154 10-10-14 Letter to Ray Whiteshead 234 36 37</p>
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<p>1 2 INDEX 3 Page 4 Direct Examination by Mr. Pipistem 7 5 Cross-Examination by Mr. Ashworth 194 6 7 EXHIBITS 8 Exhibit Description 9 (Exhibits previously marked: 10 36 10-31-13 Memo from Sarah Stevenson 58 11 37 Email String Re: Osage Wind 79 12 38 10-9-14 Letter to Francesco 180 13 Venturini from Robin Phillips 14 15 42 Organizational Procedure No. 80 204 16 17 52 Amended and Restated Balance of 51 18 Plant Engineering, Procurement and 19 Construction Contract 20 21 63 Email String Re: Material Estimates 202 22 23 68 Email String Re: Osage - Bureau of 162 24 Indian Affairs 25 70 Project Short Views - Update 182 26 10/17/14 27 28 81 Defendant's Response to Plaintiff's 121 29 Motion for Preliminary Injunction 30 82 Email String Re: Burbank Materials 137 31 Rock Quarry 32 33 84 Email String Re: Osage BIA 173 34 Discussion Attorney Client Privilege 35 91 Email String Re: Attorney Client 134 36 Privileged 37 38 (Exhibits continued on next page.)</p>	<p>1 2 STIPULATIONS 3 It is hereby stipulated and agreed by and 4 between the parties hereto, through their respective 5 attorneys, that the deposition of JOAN HEREDIA may 6 be taken pursuant to notice and in accordance with 7 the Federal Rules of Civil Procedure on July 30, 8 2021, before Jane McConnell, CSR RPR RMR CRR. 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

<p>1 GE? Maybe be more specific, sir.</p> <p>2 Q (BY MR. PIPESTEM) Yes. So let's start</p> <p>3 with GE.</p> <p>4 A Okay.</p> <p>5 Q So with regard to communications about</p> <p>6 compliance with federal Osage Nation laws, did you</p> <p>7 communicate with General Electric about those</p> <p>8 issues?</p> <p>9 MR. BALL: Objection to form.</p> <p>10 A I don't recall. Like I said, I'm sure</p> <p>11 there would have been some general questions that</p> <p>12 would have been posed to me, but I was not the</p> <p>13 primary contact with GE nor did I manage that</p> <p>14 relationship.</p> <p>15 Q (BY MR. PIPESTEM) Have you ever worked on</p> <p>16 a project where a governmental authority notified</p> <p>17 the project proponent that a license or permit was</p> <p>18 required and the project proponent refused to seek</p> <p>19 or obtain that license or permit?</p> <p>20 A I don't know what you mean by "refuse."</p> <p>21 Generally we would evaluate requirements; and if</p> <p>22 they were applicable, we would proceed and comply.</p> <p>23 Q Are you aware that the Bureau of Indian</p> <p>24 Affairs and Osage Nation indicated in this project</p> <p>25 that Osage Wind was required to get a lease from the</p>	<p>1 circumstances you can say on a project you were</p> <p>2 working on where an agency said you need a permit</p> <p>3 here and the company just said we don't think we</p> <p>4 need one, so, no, our answer to that is, no, we're</p> <p>5 not going to get that permit?</p> <p>6 A During the time that I worked with Enel</p> <p>7 Green Power, there would have been occasion when we</p> <p>8 would have talked to regulators to discuss permit</p> <p>9 requirements and our activities. But to the best</p> <p>10 of my knowledge, Enel Green Power never refused to</p> <p>11 obtain an applicable permit based upon the specific</p> <p>12 site activities.</p> <p>13 Q Okay. So was there ever a project for</p> <p>14 Enel where the governmental authority said a lease</p> <p>15 or permit is necessary where the company disagreed</p> <p>16 and said we are not going to seek that permit?</p> <p>17 A I believe that would be the case in hand</p> <p>18 that we're discussing, that there was some question</p> <p>19 as to whether or not Enel really felt that the</p> <p>20 permit was required.</p> <p>21 Q Are there any other circumstances where</p> <p>22 Enel was told by a government agency a permit is</p> <p>23 required and it decided we are not going to seek</p> <p>24 that permit?</p> <p>25 A It would be subject to legal review and</p>
<p>42</p> <p>1 Osage Minerals Council that was approved by the</p> <p>2 Bureau of Indian Affairs?</p> <p>3 MR. BALL: Objection to form.</p> <p>4 A I am not aware of a requirement for a</p> <p>5 lease. I can say that they claimed that a sandy</p> <p>6 soil permit could be required.</p> <p>7 Q (BY MR. PIPESTEM) So your understanding</p> <p>8 is that a sandy soil permit and a lease for minerals</p> <p>9 are different things?</p> <p>10 A I don't want to portray myself as a real</p> <p>11 estate expert, which would be more in the realm of a</p> <p>12 lease, but I am aware of the assertion that a permit</p> <p>13 could have been required.</p> <p>14 Q So in the circumstance of the Osage Wind</p> <p>15 project, are you aware that the Bureau of Indian</p> <p>16 Affairs and the Osage Nation alleged that a permit</p> <p>17 was required or a lease was required for the taking</p> <p>18 of minerals?</p> <p>19 A I am aware that the Bureau of Indian</p> <p>20 Affairs alleged as such.</p> <p>21 Q Okay. Have you ever worked on a project</p> <p>22 where an agency alleged that a permit was required</p> <p>23 and the company refused to get that permit?</p> <p>24 A Not if it was ultimately required.</p> <p>25 Q Well, tell me about that. Any</p>	<p>44</p> <p>1 analysis of the requirements. And then based upon</p> <p>2 the legal review and the outcome of that, there</p> <p>3 would be the decision to move forward as to</p> <p>4 appropriate and comply with rules and regs.</p> <p>5 Q But are you aware of any circumstance</p> <p>6 where Enel was told by a governmental agency that</p> <p>7 you're required to get a permit or a lease and the</p> <p>8 answer from the company after that review was we</p> <p>9 disagree, so we're not going to do it?</p> <p>10 A In the case of the Osage Nation and the</p> <p>11 sandy soil permit, my understanding is there was</p> <p>12 disagreement about the need to obtain that permit</p> <p>13 based upon our specific site activities.</p> <p>14 Q But are you aware of any other</p> <p>15 circumstances where that happened with Enel on any</p> <p>16 other project?</p> <p>17 A No, because generally we would have</p> <p>18 thorough and diligent discussions with the counter</p> <p>19 parties in order to be able to come to a mutual</p> <p>20 understanding and cooperative approach on how we</p> <p>21 would address those issues. So I would say, in</p> <p>22 general, we worked through the issues with the</p> <p>23 agencies.</p> <p>24 MR. BALL: We've been going a little over</p> <p>25 an hour. If you get to a good stopping point, a</p>